



AGILENT SERVICE TERMS

These Agilent Service Terms ("Terms") along with the applicable Service Exhibit and the terms indicated on the quotation govern the Service of Products and the license of Software Updates by Agilent Technologies, Inc. and its subsidiaries ("Agilent"). These Terms apply unless Customer has a separate agreement with Agilent that governs the Service of Products or the license of Software Updates from Agilent ("Signed Agreement"). To the extent of any conflict between these Terms or a Signed Agreement and the terms of the applicable Service Exhibit, the terms of the applicable Service Exhibit will control and take precedence.

1. DEFINITIONS

- a) "Part" means repair or replacement parts that are either sold to Customer during the course of performing Service or provided to Customer as required under a Service Agreement.
- b) "Product" means Agilent or third party hardware or consumable that is supported by Agilent as described, if applicable, in one or more Service Exhibits.
- c) "Service" means any standard support service to support Products such as hardware maintenance, calibration, repair, call center support and Software Updates and maintenance. Service will not include "Custom Service" which means service adapted to meet Customer requirements as may be agreed to between Customer and Agilent in a separate Customer Service Agreement.
- d) "Service Agreement" means Service to be provided by Agilent to Customer over a specified period of time as described in the document ("Service Exhibit") attached to the quotation.
- e) "Software Update" means updates to Agilent software provided to Customer under these Terms that consist of one or more computer programs and related documentation.
- f) "Specification" means technical information about Service as contained in the applicable Service Exhibit or, in the case of Software Updates, technical information contained in the documentation accompanying the Software Update, published by Agilent and in effect on the date Agilent provides Service or installs the Software Update.

2. AGILENT RESPONSIBILITIES

- a) Agilent will perform Service in a professional and workmanlike manner. Agilent will make reasonable efforts to deliver Service in accordance with the quotation or the applicable Service Exhibit.
- b) Agilent will perform the Service in a manner that will assure the safety of Customer's personnel, property and equipment, subject, however, to

Customer meeting the Product and site responsibilities set forth below.

- c) Agilent may select qualified and reputable subcontractors to perform Service.

3. CUSTOMER RESPONSIBILITIES AND SERVICE DISCLAIMERS

- a) To be eligible for a Service Agreement, Product must be at current specified revision levels and may require Agilent's certification, at Customer's expense, that Product is in good operating condition.
- b) Product relocation may result in additional Service charges and modified service response times. Service of a Product moved to another location is subject to availability.
- c) Customer is responsible for removing any products not eligible for Service to enable Agilent to perform Service. Additional charges, computed at Agilent's standard rates, may be incurred for any extra work caused by such products.
- d) Service Agreements do not cover any damage, defects or failures caused by: use of non-Agilent media, supplies and other products; site conditions that do not conform to Agilent's site specifications; or neglect, improper use, fire or water damage, electrical disturbances, transportation, work, or modification by non-Agilent employees or subcontractors, or other causes beyond Agilent's control.
- e) Customer is responsible for maintaining a procedure external to the Product to reconstruct lost or altered Customer files, data or programs. Customer will have a representative present when Agilent provides Service at Customer's site. Customer will notify Agilent if Product is being used in an environment that poses a potential health hazard to Agilent employees or subcontractors. Agilent may require Customer to maintain such Product under Agilent supervision.

4. ORDERS AND CANCELLATIONS

- a) All orders are subject to acceptance by Agilent.



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- b) Upon sixty (60) days written notice, Customer may delete Product from or cancel in its entirety a remedial Service Agreement that includes but is not limited to such Services as return to bench, on-site support, response center, application and technical assistance and Software Updates. Customer will receive a refund that is prorated over the term of the Service Agreement. Cancellation of a scheduled Service Agreement, including but not limited to such Services as calibration and preventive maintenance, will be subject to a fee in the amount of US \$200. Customer will also pay for all Service rendered under the scheduled Service Agreement. Information regarding applicable Service charges is available upon request. A Service Agreement that contains more than one type of Service may only be cancelled in its entirety. Customer may not cancel a portion of or an individual Service Exhibit offered under such Service Agreement.
- c) Upon sixty (60) days written notice, Agilent may delete Product no longer included in Agilent's Service offering or may cancel a Service Exhibit.

5. SHIPMENT, RISK OF LOSS AND ACCEPTANCE

- a) Unless otherwise indicated on the quotation, Customer will pay all expenses for return of Product to the Agilent service center. Agilent will pay expenses for return of Product to Customer via Agilent's standard shipping and handling methods. Other shipment methods requested by Customer may be available for an additional fee.
- b) Except for electronic transmissions as agreed to by the parties, Agilent will ship Software Updates according to Agilent's standard commercial practice.
- c) Risk of loss and damage for Parts, Software Update media or other tangible deliverables will pass to Customer at the location specified in the quotation or order acknowledgment.
- d) Acceptance of Service will occur upon performance by Agilent of such Service.

6. PRICE AND PAYMENT

- a) Prices exclude any applicable sales, value added or similar tax payable by Customer.
- b) Payment terms are as stated in the quotation or acknowledgement documentation and are subject to change if Customer's financial condition or payment records merits such change. Agilent may discontinue performance if Customer fails to pay any sum due, or fails to perform under this or any

other Agilent agreement if, after ten (10) days written notice, the failure has not been cured.

7. WARRANTY

- a) For ninety (90) days from the date of Service, Agilent will replace, at no charge, defective Parts used in Agilent's repair of Product.
- b) Agilent warrants that Software Updates will not fail to execute programming instructions due to defects in materials and workmanship when properly installed and used on hardware designated by Agilent. Agilent warrants that Agilent owned standard Software Updates substantially conform to Specifications. Agilent does not warrant that Software Updates will operate in hardware and software combinations selected by Customer, or meet requirements specified by Customer.
- c) Agilent does not warrant that the operation of Software Updates will be uninterrupted or error free.
- d) Agilent Service may use remanufactured Parts that are equivalent to new in performance.
- e) The above warranties do not cover defects resulting from improper or inadequate maintenance, installation, repair or calibration performed by Customer or a third party not authorized by Agilent; Customer or third party supplied hardware or software, interfering or supplies; unauthorized modification; improper use or operation outside of the specifications for the Product; abuse, negligence, accident, loss or damage in transit; or improper site preparation.
- f) THE WARRANTIES IN THESE TERMS ARE EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. AGILENT SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

8. LICENSES

Unless license terms are included with the Software Updates, Software Updates licensed under these Terms will be subject to the most current applicable underlying license.



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9. INTELLECTUAL PROPERTY CLAIMS

- a) Agilent will defend or settle any claim against Customer that any deliverable provided under these Terms infringes an intellectual property right provided Customer promptly notifies Agilent in writing and provides control of the defense or settlement, and assistance to Agilent.
- b) In defending or settling an infringement claim under Section 9(a), Agilent will pay infringement claim defense costs, settlement amounts and court-awarded damages. If such a claim appears likely, Agilent may, at its option, modify or replace the affected deliverable, or procure any necessary license. If Agilent determines that none of these alternatives is reasonably available, Agilent will refund Customer's purchase price.
- c) Agilent has no obligation for any claim of infringement arising from: Agilent's compliance with, or use of, Customer's designs, specifications, instructions or technical information; modifications by Customer or a third party; Software Update use outside the scope of Specifications or related application notes; or use of the deliverable with products not supplied by Agilent.

10. LIMITATION OF LIABILITY AND REMEDIES

- a) In no event will Agilent, its subcontractors or suppliers be liable for special, incidental, indirect or consequential damages (including downtime costs, loss of data, restoration costs, or lost profits) regardless of whether such claims are based on contract, tort, warranty or any other legal theory, even if advised of the possibility of such damages. This exclusion is independent of any remedy set forth in these Terms.
- b) The limitations set forth in Section 10(a) above will not apply to infringement claims under Section 9 above, or to damages for bodily injury or death.
- c) The remedies in these Terms are Customer's sole and exclusive remedies.

11. INSURANCE

For Service provided by Agilent, Agilent will maintain insurance providing, at a minimum, coverage as follows:

- a) Commercial General Liability Insurance of US \$3,000,000 combined single limit for bodily injury and property damage, per occurrence and annual aggregate;
- b) Business Auto Liability insurance of US \$3,000,000 combined single limit for bodily injury and property damage, per occurrence; and

- c) Workers Compensation in amounts sufficient to meet legal requirements in jurisdictions where work will be performed. Employers' Liability of US \$1,000,000 per accident for bodily injury by accident, US \$1,000,000 policy limit by disease, and US \$1,000,000 per employee for bodily injury by disease.

12. TERM AND TERMINATION

- a) The term of a Service Agreement will be specified on the Agilent quotation.
- b) An order or a Service Agreement may be terminated immediately upon notice in writing (a) by either party, for cause, unless the other party cures the breach within thirty (30) days of written notice of such breach or (b) by Agilent if Customer fails to pay any sums due as specified in Section 6(b) above.
- c) The other party may cancel any unfulfilled obligations under an order and any Service Agreement will terminate automatically if either party is subject to a voluntary or involuntary bankruptcy petition, becomes insolvent, is unable to pay its debts as they become due, ceases to do business as a going concern, makes an offer or assignment or compromise for the benefit of creditors, or there is a substantial cessation of its regular course of business, or a receiver or trustee is appointed for such party's assets.
- d) Except as provided in Section 4(b) which applies in the event of Cancellation of a Service Agreement, upon termination of an order or a Service Agreement, Customer will pay Agilent for all Service performed and charges and expenses incurred by Agilent up to the date of termination. Information regarding applicable Service charges is available upon request. If the sum of such amounts is less than any advance payment received by Agilent, Agilent will refund the difference within thirty (30) days of receipt of an invoice from Customer. Customer will receive all work in progress for which Customer has paid.
- e) Provisions herein which by their nature extend beyond the termination of any Service will remain in effect until fulfilled.

13. GENERAL

- a) Customer may not assign or transfer a Service Agreement without Agilent's prior written consent. Any attempted assignment or transfer without such consent will be void. As conditions to such consent: (i) the assignee or transferee must agree in writing to the applicable Agilent Service terms; (ii) Agilent



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may require that Product included within a Service Agreement be in good operating condition; and (iii) Agilent may impose applicable charges in connection with the assignment or transfer. Customer may not assume a Service Agreement in connection with any bankruptcy proceedings without Agilent's written consent.

- b) Agilent will store and use Customer's personal data in accordance with Agilent's Privacy Statement available at - www.agilent.com/go/privacy. Agilent will not sell, rent or lease Customer's personal data to others.
- c) The parties agree to comply with applicable laws and regulations. Agilent may suspend performance if Customer is in violation of applicable laws or regulations.
- d) Use, distribution or disclosure of Products by the U.S Government is subject to DFARS 227.7202-3 (Rights in Commercial Computer Software), DFARS 252.227-7015 (Technical Data - Commercial Items), and FAR 52.227-19 (Commercial Computer Software- Restricted Rights).
- e) Disputes arising in connection with these Terms will be governed by the laws of the State of California.
- f) To the extent that any provision or a portion of any provision of these Terms is determined to be illegal or unenforceable, the remainder of these Terms will remain in full force and effect.
- g) The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms.
- h) Agilent may assign or transfer any of its rights or obligations under these Terms and applicable Service Exhibits upon notice in connection with a merger, reorganization, transfer, sale of assets or product lines, demerger or spin-off transaction or change of control or ownership of Agilent, or its permitted successive assignees or transferees.
- i) These Terms and any Service Exhibits attached hereto constitute the entire agreement between Agilent and Customer, and supersede any previous communications, representations or agreements between the parties, whether oral or written, regarding transactions hereunder. Customer's additional or different terms and conditions will not apply.